

Assuming that the Court of Appeals will reverse the decrees and orders of this court, (and the petitioner Vickers must make out his right to be paid his dividend in the present state of the case, upon that assumption,) and new accounts will necessarily have to be stated. How these new accounts will affect the rights of parties will, of course, depend upon the character of the judgment which may be pronounced by the Court of Appeals. The petitioner's dividend may be augmented, or it may be diminished, or he may be altogether excluded, and therefore to pay him now will be exposing the appellant to the risk of loss. The very object of his appeal and of the bond he has given, is to protect himself against this risk, and he is entitled to this protection, the bond furnishing the other party an indemnity for such injury as he may sustain by the delay in case the appeal should be unsuccessful.

It may be that in a perfectly clear case, that is, when this court could see that the execution of its order could in no *possible contingency* prejudice the party appealing, that it would direct its execution. But it must be a case which would admit of no doubt, and perhaps in any case, however clear this court might see its way, such a course might be regarded as an undue stretch of authority, as the act of Assembly regulating writs of error and granting appeals, directs, by plain implication, that when a bond is given as prescribed by the act, the judgment or decree appealed from shall be stayed and delayed.

Now, in this case, the order of the 24th of July, 1850, under which the petitioner asks to be paid his dividend has been appealed from, and a bond given to prosecute the appeal according to the act of Assembly. The order, therefore, is stayed. Its power is suspended by virtue of the appeal and bond, and for this court to undertake to carry it into execution, notwithstanding the party appellant has done that which the legislature has said shall operate to stay its order, would seem to be an usurpation of authority. The case, indeed, must be strong and flagrant, which would justify such a course of proceeding. The present is not such a case, and, therefore, the application must be refused.